IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 237/2003
Reserved on: 19.4.2007
Date of decision: 1.5.2007

Rajinder Kumar & others. **…Petitioner.**

Versus

Bhakra Beas Management Board & anr. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1] *Yes.*

For the petitioner : **Mr.Shrawan Dogra, Advocate.**

For the respondents. **Mr. N.K. Sood, Advocate**

Rajiv Sharma,J. (Oral)

By medium of this writ petition, office memorandum dated 21.8.2002 is assailed.

The brief facts necessary for the adjudication of this petition are that the petitioners were appointed as Pressure Filter Attendants in the pay scale of Rs. 770-1440 at Civil Sub Division No.1, Slapper of the BBMB Power Wing. The case set out by the petitioners is that though they have been appointed as Pressure Filter Attendants yet they had been discharging duties of Pump Operators but they were being paid wages of Pressure Filter Attendants.

Mr. Shrawan Dogra, Advocate appearing on behalf of petitioners submitted that on the basis of various representations made by the petitioners individually and through their Union, a conscious decision was

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

taken by the respondents to re-designate the petitioners vide Annexures P-4 and P-5 but with a rider ***'immediate effect'***.

Mr. N.K. Sood, Advocate appearing on behalf of respondents submitted that the decision has been taken vide Annexures P-4 and P-5 in a very judicious manner and the petitioners cannot claim benefits of re-designation from the date of their initial appointment.

I have perused the record and heard the parties.

Sanction was conveyed for the creation of various posts by Administrative Control of Chief Engineer (Generation) BBMB, (PW), Nangal for the period 1.5.1988 to 28.2.1989. The sanctioned posts were to be operated subject to the conditions attached with individual sanction as per Annexure 'A'. The copy of sanction letter has been placed on record by the respondents and marked as Annexure 'RA' dated 30.4.1998. 12 posts of Pressure Filter Attendants find mention in Annexure 'TP-76/77' of Annexure RA. The sanction was accorded to re-designate all these 12 number of posts of Pressure Filter Attendants (Normal) on 19.2.1997 (Annexure P-4). The sanction was accorded with approval of Chairman of the respondents' Board.

In sequel to Annexure P-4, the Superintending Engineer, DPH Circle, BBMB (PW), Slapper has issued office order dated 4.3.1997 whereby 12 number of Pressure Filter Attendants were re-designated to the post of Pump Operators with immediate effect. The Resident Engineer, **DPH, DPH** Division, Slapper on 5.12.2001 has sent letter to Superintending Engineer, DPH bringing to his notice that though the re-designation of the posts of Pressure Filter Attendants was genuine but while considering the case from the retrospective date, the appointment/promotion of the officials as Pump Operator mentioned at Sr. No.7 of the communication may be kept in view. Pursuant to letter dated

5.12.2001, the Superintending Engineer, DPH 'C' BBMB (PW), Slapper has sent the letter to Engineer-in-Chief/SO, BBMB, Chd. dated 11.12.2001 whereby he also shared the concern expressed by the Resident Engineer and has stated in his communication that the persons mentioned in para 3, class-III cadre and the petitioners i.e. Pressure Filter Attendants had been re-designated from Class-IV cadre to Class-III cadre and ultimately, the Superintending Engineer, DPH 'C' BBMB (PW), Slapper has recommended that the re-designation to Pressure Filter Attendants should only be considered with effect from 8.9.1991.

The case of the petitioners seeking all consequential benefits of re-designation from their initial appointment as Pressure Filter Attendants was shot down by the Finance Department and the operative portion of the same is reproduced below:

> **"Finance feels that there is absolutely no justification in the proposal. It would have wider repercussion besides audit observations from Statutory Audit. As such, Finance does not support the proposal.**

The core issue for consideration before this Court is that once a conscious decision has been taken on 19.2.1997 to re-designate the petitioners as Pump Operators, whether consequential benefits flowing therefrom were to be paid with immediate effect or they were to relate back to the initial appointments of the petitioners to the post of Pressure Filter Attendants.

This court is of the firm view that the conscious decision has been taken administratively by the respondents on 19.2.1997/4.3.1997 whereby the petitioners were re-designated as Pump Operators on the basis of data available and the duties being discharged by the petitioners from the very beginning. If the decision has been taken ultimately to re-designate 12 posts of Pressure Filter Attendants to the Pump Operators,

the same should have been made applicable with effect from initial appointment of the petitioners as Pressure Filter Attendants. It appears from the material placed on record of this petition that the sole reason why the expression 'immediate effect' has been used by the respondents for depriving the petitioners of the status of Pump Operators from the year 1988 is to protect the seniority of Pump Operators, who already belonged to Class-III cadre. Once the petitioners have been re-designated as Pump Operators, they loose their birth mark of Pressure Filter Attendants. The petitioners cannot be discriminated for granting them consequential benefits with effect from 1988-89 only on the basis of their mode of recruitment. Once the petitioners are also re-designated even though at one given time, they might be working in Class-IV cadre, they have to be treated at par with other Class-III employees working with the respondents' Board. The existing class of Pump Operators and the petitioners, who have been re-designated as Pump Operators form a homogenous class and they cannot be discriminated on the basis of their entry into Class-III cadre on account of re-designation. The reasons assigned as per Annexure P-8 dated 21.8.2002 are also not cogent to deny the benefits to petitioners of re-designation from the year of their initial appointment as Pressure Filter Attendants. The petitioners' case could not be rejected on the basis of observations of the Finance Department on the ground that if the benefits are accorded to the petitioners from their initial appointment as Pressure Filter Attendants the same will have wider repercussion. The Finance Department has not explained the connotation 'wider repercussion'. Similarly the other ground mentioned therein that there could be observations from 'Statutory Audit' was not sufficient ground to deny the petitioners re-designation from the anterior date.

Thus, the expression 'immediate effect' as mentioned in Annexure P-5 dated 4.3.1997 is liable to be struck down after applying the principle of severability being violative of Articles 14 and 16 of the Constitution of India.

Upshot of the above discussion is that the writ petition deserves to be allowed. Accordingly, the writ petition is allowed and the impugned Annexure P-8 dated 21.8.1992 is quashed and set aside and the petitioners are held entitled to re-designation with all consequential benefits as Pump Operators from the initial date of their appointments. The respondents are directed to work out the monetary benefits to which the petitioners will be entitled and thereafter the petitioners be also assigned the due seniority from the date of their initial appointment. The respondents are directed to pay the arrears of salary etc. to the petitioners within a period of three months from today failing which the petitioners shall be entitled to interest @ 12% per annum till the date of payment.

There shall be no order as to costs.

(Rajiv Sharma), Judge

May 1, 2007
**Awasthi*